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FISCAL IMPACT STATEMENT

LS 6974
BILL NUMBER: SB 245

NOTE PREPARED: Feb 22, 2006
BILL AMENDED: Feb 21, 2006

SUBJECT: Telecommunications.

FIRST AUTHOR: Sen. Hershman
FIRST SPONSOR: Rep. Koch

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Accessible Electronic Information Service Fund:* This bill establishes the Accessible Electronic Information Service Fund.

Utility Consumer Counselor & Other Occupations: The bill prohibits the Utility Consumer Counselor from engaging in another occupation that would conflict with the duties of the office. (Current law prohibits the Counselor from engaging in any other occupation.)

Public Utility Definition Change: The bill also specifies that a person that transmits communications through Internet Protocol-enabled services is not a public utility.

Changes to IURC Jurisdiction, Authority, and Duties: The bill prohibits the IURC from exercising jurisdiction over:
(1) advanced and broadband services; and
(2) information services.

This bill also specifies that the IURC shall not exercise jurisdiction over commercial mobile service.

This bill prohibits, after March 27, 2006, the IURC from exercising jurisdiction over nonbasic telecommunications service. It specifies that "basic telecommunications service" does not include functionally equivalent service provided by a person that transmits communications through Internet Protocol enabled services. The bill prohibits, after June 30, 2009, the IURC from exercising jurisdiction over basic telecommunications service.

This bill also prohibits the IURC from exceeding the authority delegated to it under federal law with respect to:

(1) interconnection;
(2) the resale of telecommunications service; and
(3) unbundled network elements.

This bill requires the IURC to biennially identify and eliminate telecommunications regulations that are no longer necessary in the public interest or for the protection of consumers.

The bill preserves the IURC's duties with respect to:

(1) dual-party relay services;
(2) the 211 dialing code;
(3) slamming and cramming laws;
(4) universal service;
(5) certificates of territorial authority;
(6) mediating or arbitrating disputes between providers;
(7) interconnection agreements; and
(8) rates charged by an incumbent local exchange carrier (ILEC) to a pay phone service provider.

The bill allows the IURC to require communications service providers, other than commercial mobile service providers, to report annually, or more frequently at the option of the provider, information on:

(1) service quality and performance;
(2) the provider's dark fiber in Indiana; and
(3) the types of communications service offered by the provider and the areas in Indiana in which those services are offered.

This bill also requires the IURC to adopt rules requiring a telecommunications service provider, whenever the provider communicates with a residential customer about changing the customer's basic telecommunications service to nonbasic telecommunications service, to notify the customer of:

(1) the option of basic telecommunications service; and
(2) any regulatory protections the customer would forego by switching to nonbasic telecommunications service.

This bill exempts commercial mobile service providers from certain reporting requirements, while requiring commercial mobile service providers to provide the IURC certain customer service contact information.

The bill allows the IURC to revoke a certificate of territorial authority issued to a communications service provider if the provider fails or refuses to comply with the reporting requirements.

The bill also allows the IURC to:

(1) order certain equitable remedies; and
(2) impose a civil penalty of not more than $10,000;

if a telecommunications service provider or video service provider violates the enforcement law or a lawful order of the IURC.

The bill after June 30, 2009, requires a communications service provider to obtain a certificate of territorial authority from the IURC before offering communications service in Indiana. The bill also requires the IURC to issue a certificate not later than 30 days after receiving a complete and accurate application from a provider. This bill provides that the IURC may not require a provider to file a tariff as a condition of receiving a certificate. This bill also allows the IURC to condition the issuance of a certificate on a provider's agreement to provide advance notice to customers of changes in rates or services.

The bill also provides that the IURC may not require a provider to provide communications service to occupants of multitenant nonresidential real estate if the owner, operator, or developer of the property does any of the following to benefit another provider:

(1) Permits only one provider to install communications facilities or equipment on the premises.
(2) Accepts incentives from a provider in exchange for allowing the provider the exclusive right to provide service to the premises.
(3) Collects charges from occupants for communications service.
(4) Enters into a prohibited agreement with a provider.

The bill also prohibits the IURC from requiring a multichannel video programming distributor to pay any fee or charge, other than a franchise fee paid to a local unit, as a condition of receiving or holding a state certificate of franchise authority.

The bill also provides that after June 30, 2006, the IURC is the sole franchising authority for the provision of video service in Indiana.

The bill prohibits the IURC from requiring a provider to satisfy any build-out requirements.

This bill requires the IURC to adopt rules to establish the Indiana Lifeline Assistance Program to provide reduced charges for basic telecommunications service for eligible customers.

This bill also requires the IURC to collect, on at least an annual basis, certain data concerning the build out of video service infrastructure in each metropolitan statistical area in Indiana during the period beginning July 1, 2006, and ending June 30, 2010.

The bill requires the IURC to include the data collected in the IURC's report to the Regulatory Flexibility Committee due July 1, 2010.

It repeals superseded statutes.

Provider Rate Increases: The bill provides that during the period beginning March 28, 2006, and ending June 30, 2009, a provider may increase the flat monthly rate for basic telecommunications service:

(1) not more than once; and
(2) by not more than $1; every 12 months.

The bill also provides that not later than 18 months after a provider's first rate increase in a local exchange area, the provider must offer broadband service to at least 50% of households in the local exchange area. The bill requires an ILEC to continue to offer a flat monthly rate for unlimited local calling in exchange areas in which the provider offers basic telecommunications service on March 27, 2006. This bill provides that after June 30, 2009, a provider that offers basic telecommunications service in Indiana:

(1) must offer a flat monthly rate for unlimited local calling in each exchange area in which the provider offers basic telecommunications service; and

(2) may not offer any service plan that includes measured local service.

Provider Requirements & Changes: This bill makes conforming changes to the laws concerning rural telephone cooperatives.

The bill provides that if a customer switches to another telecommunications services provider, the initial provider may contact the customer to confirm that the customer has made the decision to change to the other provider. This bill also prohibits a provider from refusing to transfer a local exchange service customer to another provider on the same terms and conditions that the provider receives from any other provider.

This bill allows a provider of last resort to meet its obligations using any available technology. The bill provides that a certificate of public convenience and necessity issued to an REMC may serve as a certificate of territorial authority for communications service provided by the REMC, subject to the IURC's right to require the REMC to provide certain information about the communications services provided.

The bill prohibits a communications service provider from entering into an agreement after March 27, 2006, that requires any person to restrict or limit the ability of another provider to obtain:
(1) easements or rights-of-way; or
(2) access to real property.

The bill preserves the manner of determining gross revenue and franchise fee percentages set forth in existing local franchises. This bill provides that the holder of a state-issued franchise must comply with state and local laws governing the use of rights-of-way. This bill also provides that such laws may not:
(1) discriminate against a provider based on the technology used to deliver service; or
(2) allow a video service system owned or operated by a local unit to use rights-of-way on more favorable terms.

The bill allows the holder of a local franchise on June 30, 2006, to:
(1) continue providing service under the local franchise until the local franchise expires; or
(2) terminate the local franchise and apply to the IURC for a state-issued franchise.

This bill also provides that a provider that terminates a local franchise remains subject to any obligations owed to a private person under the franchise until the time the terminated franchise would ordinarily expire.

The bill prescribes requirements concerning public, educational, and governmental channel capacity and financial support.

This bill provides that a video service provider that elects to terminate a local franchise is required to continue providing institutional network capacity and video service to community public buildings until January 1, 2009, or until the terminated local franchise would have expired, whichever is later.

The bill prohibits a provider from denying access to video service to any group of potential subscribers based on income.

Indiana Finance Authority: This bill provides that the Indiana Finance Authority shall determine underserved areas within Indiana for purposes of the Indiana broadband development program.

Effective Date: Upon passage; July 1, 2006; July 1, 2009.

Explanation of State Expenditures: (Revised) *Accessible Electronic Information Service Fund:* This bill establishes the Accessible Electronic Information Service Fund. The bill does not appropriate any money to this fund. The bill establishes the fund and provides that it is made up in part by General Assembly appropriations. This fund would be used to provide news and information to the blind and disabled through use of various technologies.

(Revised) *Changes to IURC Jurisdiction, Authority, and Duties:* This bill contains provisions that will add responsibilities to the IURC and others that will remove responsibilities from the IURC. Because the Commission's responsibilities encompass all utility types, it is unknown what proportion of the Commission's spending is related to telecommunications.

This bill also requires the IURC to collect, on at least an annual basis, certain data concerning the build out of video service infrastructure in each metropolitan statistical area in Indiana during the period beginning July 1, 2006, and ending June 30, 2010. The bill also requires the IURC to include the data collected in the IURC's report to the Regulatory Flexibility Committee due July 1, 2010.

Indiana Lifeline Assistance (ILA) Program: This provision will cause an indeterminable increase in expenditures for the IURC and OUCC. The ILA Program will provide basic telecommunication services at a reduced rate to eligible customers. An eligible customer is defined as a person who: (1) has an income at or below 150% of the federal poverty level; and (2) has a child who receives any of the following:

(A) Medicaid.
(B) Food stamps.
(C) Supplemental Security Income.
(D) Federal public housing assistance.
(E) Home energy assistance under a program administered by the Division of Family Resources under IC 12-14-11.
(F) Assistance under the federal Temporary Assistance to Needy Families (TANF) program (45 CFR 260 et seq.).
(G) Free lunches under the national school lunch program.

The cost of the program is to be paid out of the budgets of the IURC and OUCC. The cost of this program is indeterminable. The IURC and OUCC will be required to reimburse the providers for the lost revenue associated with providing eligible customers this reduced rate service.

Explanation of State Revenues: (Revised) *Public Utility Fees:* This bill provides that a person that transmits communications through Internet Protocol-enabled services is not a public utility, and therefore is exempt from paying the Public Utility Fee after June 30, 2009. This will decrease revenue to the Public Utility Fund. The exact amount of the decrease is indeterminable.

The Public Utility fees are deposited in the Public Utility Fund. The operating budgets of the IURC and the OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2005, fees from the utilities and fines generated approximately $11.7 M.

(Revised) *Rates & Charges:* The IURC, under the bill, will retain jurisdiction with respect to:

(1) dual-party relay services;
(2) the 211 dialing code and other universally applicable dialing codes;
(3) slamming and cramming laws;
(4) universal service;
(5) certificates of territorial authority;
(6) mediating or arbitrating disputes between providers;
(7) interconnection agreements; and
(8) rates charged by an incumbent local exchange carrier to a pay phone service provider.

This bill prohibits, after March 27, 2006, the IURC from exercising jurisdiction over nonbasic telecommunications service. The bill specifies that "basic telecommunications service" does not include functionally equivalent service provided by a person that transmits communications through Internet Protocol-enabled services. The bill also prohibits, after June 30, 2009, the IURC from exercising jurisdiction over basic telecommunications service.

The bill also provides for a structure of rate increases that can be implemented between March 2006 and June 2009. A provider can increase rates one time every 12 months, and by not more than $1 every 12 months during the March 2006 to June 2009 period.

These services are subject to the state Sales Tax. Revenues generated by telecommunications carriers' services may increase or decrease subject to fluctuation in the carriers' rates and charges. State Sales Tax revenue is deposited in the following funds: General Fund, Property Tax Replacement Fund, Public Mass Transportation Fund, Industrial Rail Service Fund, and the Commuter Rail Service Fund. By allowing telecommunications providers to increase their flat monthly rates, state General Fund revenue from the state's 1.4% Utility Receipts Tax could also increase.

(Revised) *Civil Penalties*: The bill also allows the IURC to:

(1) order certain equitable remedies; and
(2) impose a civil penalty of not more than $10,000;

if a telecommunications service provider or video service provider violates the enforcement law or a lawful order of the IURC.

Civil penalties that are collected for violations that affect customers of a provider are to be refunded to the customers through credits on bills. Civil penalties collected for any violation other than to customers are to be deposited in an account designated by the Indiana Finance Authority to be used for making loans and grants available for broadband developers and operators under the Indiana Broadband Development program established by IC 8-1-33-15.

Territorial Authority: One of the main telecommunications-related responsibilities of the Commission after June 30, 2009, will be to continue issuing territorial authority certificates to telecommunications carriers wishing to provide telecommunications services to customers in Indiana. Currently, a hearing must be held before the certificate may be issued. This provision eliminates this requirement and should further reduce the Commission's administrative burden.

Explanation of Local Expenditures: *Public Utility Fund*: Municipal utilities are not subject to the state's

Public Utility Fee.

Explanation of Local Revenues:

State Agencies Affected: Indiana Utility Regulatory Commission; Attorney General; Department of Local Government Finance.

Local Agencies Affected: Certain political subdivisions, trial courts, city and town courts.

Information Sources: Indiana Utility Regulatory Commission.

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